

RECEIVED
FEC MAIL
OPERATIONS CENTER

2004 MAR 14
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
2004 MAR 14 P 4:46

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5199
Bush-Cheney 2000, Inc.)
and David Herndon, as Treasurer)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint filed by the

Democratic National Committee. The Federal Election Commission ("Commission") found probable cause to believe that Bush-Cheney 2000, Inc. and David Herndon, as Treasurer ("Respondents") violated 2 U.S.C. § 434(b)(2)(J), 2 U.S.C. § 434(b)(4)(G) and (I), 2 U.S.C. § 434(b)(3)(G), and 2 U.S.C. § 434(b)(6)(A).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Bush-Cheney 2000, Inc. is a political committee within the meaning of 2 U.S.C. § 431(4).

2. David Herndon is the treasurer of Bush-Cheney 2000, Inc.

3. The Respondents held a bank account designated "Bush-Cheney 2000, Inc. - Media." After the November 7, 2000 presidential election, Respondents redesignated

its bank account "Bush-Cheney 2000, Inc. - Recount Fund" ("BCRF") and used the account to raise funds and pay costs associated with the recount. That account had never been used for any activity until after the November 7, 2000 election.

4. The Respondents did not report receipts and disbursements associated with its recount activities in required disclosure reports filed with the Commission. Respondents contend that such a filing was not required because they believe that there is no material difference between BCRF and a recount fund established as a separate account after the election. The Commission and Respondents note that if persons connected with Bush-Cheney 2000, Inc. had established a separate organizational entity, Bush-Cheney 2000, Inc. would not have been required to file disclosure reports with the Commission with respect to the activities that are the subject of this Matter Under Review.

5. The Commission's regulations require political committees to report all "receipts" and "disbursements." 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.3.

6. An authorized committee of a candidate for Federal office must report the following categories of receipts: (i) contributions from persons other than political committees; (ii) contributions from the candidate; (iii) contributions from political party committees; (iv) contributions from other political committees; (v) total contributions; (vi) transfers from other authorized committees of the same candidate; (vii) loans; (viii) federal funds received under Chapter 95 and Chapter 96 of Title 26 of the U.S. Code; (ix) offsets to operating expenditures; (x) "other receipts;" and (xi) total receipts, 11 C.F.R. § 104.3(a)(3)(i)(xi); *see* 2 U.S.C. § 434(b)(2)(A)-(K). Respondents note that they have

1 filed all information required by the Internal Revenue Service since July 27, 2002 and
 2 that that information has been available to the public on the IRS web site.

3 7. An authorized committee of a candidate for Federal office must also
 4 report, *inter alia*, the identification of each person who provides any dividend, interest, or
 5 "other receipt" to the committee in an aggregate value or amount in excess of \$200 within
 6 the calendar year in 2000, and within the election cycle beginning in 2001, together with
 7 the date and amount of any such receipt, 2 U.S.C. § 434(b)(3)(G); 11 C.F.R.

8 § 104.3(a)(4)(vi). The requirement that the committee report the "identification" of such
 9 contributors means the committee must report, in the case of an individual, his or her full
 10 name; mailing address; occupation; and the name of his or her employer; and, in the case
 11 of any other person, the person's full name and address (referenced hereinafter as the
 12 requirement to "itemize its other receipts"). 11 C.F.R. § 100.12; 11 C.F.R.

13 § 104.3(a)(4)(vi). Respondents note that they have filed all information required by the
 14 Internal Revenue Service since July 27, 2002 and that that information has been available
 15 to the public on the IRS web site. 8. An authorized committee of a candidate for

16 Federal office must report the following categories of disbursements: (i) operating
 17 expenditures; (ii) transfers to other committees authorized by the same candidate; (iii)
 18 repayment of loans; (iv) for an authorized committee of a candidate for the office of
 19 President, disbursements not subject to the limitations of 11 C.F.R. § 110.8 (concerning
 20 dollar limits on expenditures); (v) offsets; (vi) other disbursements; and (vii) total
 21 disbursements. 11 C.F.R. § 104.3(b)(2)(i)-(vii); *see* 2 U.S.C. §§

22 434(b)(4)(A)-(I). Respondents note that they have filed all information required by the
 23 Internal Revenue Service since July 27, 2002 and that that information has been available

24-04-407-3406

24-04-407-3407

1 to the public on the IRS web site. 9. An authorized committee of a candidate for Federal
2 office must also report, *inter alia*, the name and address of each person who has received
3 a disbursement that falls within the "other disbursement" category in an aggregate amount
4 or value in excess of \$200 within the calendar year in 2000, and within the election cycle
5 beginning in 2001, together with the date, amount, and purpose of any such disbursement
6 (referenced hereinafter as the requirement to "itemize its other disbursements"). 2 U.S.C.
7 § 434(b)(6)(A); 11 C.F.R. § 104.3(b)(4)(vi). Respondents note that they have filed all
8 information required by the Internal Revenue Service since July 27, 2002 and that that
9 information has been available to the public on the IRS web site. 10. In Advisory
10 Opinions 1998-26 and 1978-92, the Commission held that a separate organizational entity
11 established solely for purposes of funding a recount effort would not become a political
12 committee and would not be required to file disclosure reports, but if a federal political
13 committee establishes any bank account for recount purposes the receipts and
14 disbursements of those accounts would be reportable transactions of the committee,
15 within the categories of "other receipts" and "other disbursements." The Commission
16 and Respondents note that if persons connected with Bush-Cheney 2000, Inc. had
17 established a separate organizational entity, Bush-Cheney 2000, Inc. would not have been
18 required to file disclosure reports with the Commission with respect to the activities that
19 are the subject of this Matter Under Review.

20 V. Respondents admit the following:

21 1. Respondents failed to report the receipts and disbursements associated
22 with its recount activities in violation of 2 U.S.C. § 434(b)(2)(J) and 2 U.S.C.
23 § 434(b)(4)(G) and (I) with the Commission. Respondents note that they have filed all

1 information required by the Internal Revenue Service since July 27, 2002 and that that
2 information has been available to the public on the IRS web site and continues to be
3 publicly available at the web site maintained by the Internal Revenue Service as of
4 January 1, 2004.

5 2. Respondents failed to itemize its "other receipts," where appropriate, in
6 violation of 2 U.S.C. § 434(b)(3)(G). Respondents note that they have filed all
7 information required by the Internal Revenue Service since July 27, 2002 and that that
8 information has been available to the public on the IRS web and continues to be publicly
9 available at the web site maintained by the Internal Revenue Service as of January 1,
10 2004.

11 3. Respondents failed to itemize its "other disbursements," where
12 appropriate, in violation of 2 U.S.C. § 434(b)(6)(A). Respondents note that they have
13 filed all information required by the Internal Revenue Service since July 27, 2002 and
14 that that information has been available to the public on the IRS web site and continues to
15 be publicly available at the web site maintained by the Internal Revenue Service as of
16 January 1, 2004.

17 4. Respondents will cease and desist from violating 2 U.S.C.
18 § 434(b)(2)(J), 2 U.S.C. § 434(b)(4)(G) and (I), 2 U.S.C. 434(b)(3)(G), and 2 U.S.C.
19 § 434(b)(6)(A).

20 VI. Respondents will pay a civil penalty to the Federal Election Commission
21 in the amount of Ninety Thousand Dollars (\$90,000) pursuant to 2 U.S.C.
22 § 437g(a)(5)(A).

23 VII. The Respondents will submit to the Commission's Reports Analysis

24-04-407-3408

1 Division one miscellaneous filing that contains three documents and is accompanied by a
2 cover letter. The cover letter shall state that this submission is being made pursuant to the
3 conciliation Agreement in MUR 5199, and shall identify the contents of the submission.

4 The submission shall contain the following:

5 (1). The first document will disclose all itemized disbursements for the Recount Fund
6 for the entire period of recount activity and will be provided on a Schedule B-P for FEC
7 Form 3P.

8 (2). The second document will consist of reports filed with the Internal Revenue
9 Service reflecting the itemized receipts of the Recount Fund for the entire period of recount
10 activity.

11 (3). The final document will be a spreadsheet disclosing the totals of all disbursements
12 and all receipts of the Recount Fund, and detailing how the applicable line number totals in
13 the FEC Summary Page and the FEC Detailed Summary of Receipts and Disbursements
14 would be changed on all reports previously filed by the Respondents if the recount fund
15 activity had been included with those filings.

16
17 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
18 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review
19 compliance with this agreement. If the Commission believes that this agreement or any
20 requirement thereof has been violated, it may institute a civil action for relief in the
21 United States District Court for the District of Columbia.

22 IX. This agreement shall become effective as of the date that all parties hereto
23 have executed same and the Commission has approved the entire agreement.

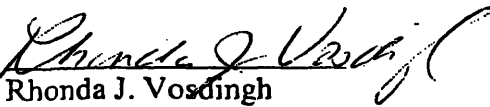
24-04-407-3409

1 X. Respondents shall have no more than 30 days from the date this agreement
 2 becomes effective to comply with and implement the requirements contained in this
 3 agreement and to so notify the Commission.

4 XI. This Conciliation Agreement constitutes the entire agreement between the
 5 parties on the matters raised herein, and no other statement, promise, or agreement, either
 6 written or oral, made by either party or by agents of either party, that is not contained in
 7 this written agreement shall be enforceable.

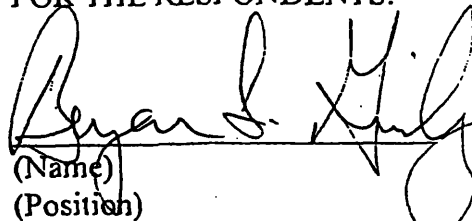
8 FOR THE COMMISSION:

9 Lawrence H. Norton
 10 General Counsel

11 BY: 
 12 Rhonda J. Vosdingh
 13 Associate General Counsel
 14 for Enforcement

4/15/04
 Date

15 FOR THE RESPONDENTS:

16 
 17 (Name)
 18 (Position)
 19
 20

March 4, 2004
 Date

24-04-407-3410